

Rule Summary and Fiscal Analysis (Part A)**Department of Aging**

Agency Name

Division

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173-40-03

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Disenrollment from the PASSPORT grandparented home care program.**RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **Yes**

2. Are you proposing this rule as a result of recent legislation? **Yes**

Bill Number: **HB153**General Assembly: **129**Sponsor: **Amstutz**

3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **111.15**

4. Statute(s) authorizing agency to adopt the rule: **173.01, 173.02, 173.40**

5. Statute(s) the rule, as filed, amplifies or implements: **173.40**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

ODA is proposing to amend this rule as part of a larger rule package.

ODA is proposing to amend Chapter 173-40 of the Administrative Code. In doing so, ODA has 3 basic goals:

1. To incorporate H.B. No. 153's amendments to section 173.40 of the Revised Code into Chapter 173-40 of the Administrative Code. H.B. No. 153's amendments to section 173.40 of the Revised Code codify ODA's authority to create the

state-funded component of the PASSPORT Program and require ODA to adopt rules to implement the program, including a rule that establishes the three categories of eligibility criteria. The amendments also change the nomenclature for the same program. The effective date of H.B. No. 153's amendments is July 1, 2011. ODA must now amend Chapter 173-40 of the Administrative Code to bring the rules into compliance with the new statute. ODA's proposes to adopt the amendments to the chapter on September 29, 2011.

2. To comply with section 119.032 of the Revised Code, which requires each state agency to review each rule on or before the rule's designated review date.

3. To comply with Governor Kasich's Executive Order 2011-01K "Implementing Common Sense Business Regulation" and S.B. No. 2 (129th G.A.):

a. ODA is proposing to amend the rules after interested parties and the general public have had opportunities to provide input:

i. Interested parties and the general public had the opportunity to testify to the finance committees of the Ohio House of Representatives and the Ohio Senate as those legislative bodies considered public testimony on the amendments that H.B. No. 153 proposed to make to section 173.40 of the Administrative Code.

ii. From June 30, 2011 to July 11, 2011, ODA posted the proposed amended rules on <http://aging.ohio.gov/information.rules/proposed.aspx> for a public-comment period.

b. ODA reviewed the rules to eliminate unnecessary regulations and to write rules that were as easy to read as the subject matter allows. In doing so, ODA:

i. Used 1-topic rules to allow the title of each rule to give away the content of the rule. This allows any person to thumb through the rule titles of the Ohio Administrative Code to easily find a particular rule.

ii. Incorporated sub-headings into the rules to allow any person to thumb through the sub-headings to easily find a particular sub-topic. Subheadings particularly help in two rules that outline the eligibility criteria or the disenrollment of three categories of eligibility: presumptive, loss of medicaid, and grandfathered.

iii. Made the terminology more homogenous from one rule to the next, from one program to the next, and between the Ohio Administrative Code and the Ohio Revised Code.

iv. Increased the use of natural use of terms to avoid unnatural definitions, jargon, and legalese.

v. Replaced much of the passive voice with the active voice to increase language that clearly states who is responsible for what action.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; if the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

The proposed amended rule details the disenrollment process for each of the three types of consumers who are enrolled into the state-funded component for the PASSPORT Program.

Please also see the revisions that ODA lists in item #11 of this RSFA.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

Not Applicable.

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so:

On July 14, 2011, ODA revise-filed the rule to:

1. Schedule a public hearing. H.B. No. 153 authorizes ODA to adopt this chapter according to section 111.15, not section 119.03, of the Revised Code. Filing proposed new rules under section 111.15 of the Revised Code does not require ODA to conduct a public hearing. Nevertheless, ODA will conduct a public hearing

to obtain comments concerning ODA's proposed amendments to Chapter 173-40 of the Administrative Code.

2. Upload a public-hearing notice.
3. Revise this RSFA.

On July 26, 2011, ODA revise-filed the rule to:

1. Insert "3" into "(A)()" in paragraph (C) of the rule.
2. Replace "plan of care" in paragraphs (C)(3) [now (C)(1)(c)] and (C)(6)(c) [now (C)(3)(c)] of the rule with "service plan." ODA is making this revision in response to a comment that the Ohio Association of Area Agencies on Aging submitted on rule 173-40-01 of the Administrative Code during ODA's public-comment period. The comment called for consistent use of "plan of care" or "service plan." In CMS' "Application for a [1915(c)] Home and Community-Based Waiver [Version 3.5]: Instructions, Technical Guide and Review Criteria," CMS uses "service plan." Additionally, ODA uses "service plan" in other rules. Therefore, ODA is choosing to use "service plan" in this rule, too.
3. Revise this RSFA.

On July 27, 2011, ODA revise-filed the rule to:

1. Replace "(A)(2)" in paragraph (A) of the rule with "(A)(1)."
2. Replace "173-51-02" in paragraphs (A)(1)(b) and (B)(1)(b) of the rule with "173-40-02."
3. Consolidate paragraphs (A)(2), (A)(2)(a), and (A)(2)(b) of the rule into one new paragraph (A)(2) of the rule.
4. Reorganize paragraphs (B)(2)(a) and (B)(2)(b) of the rule so that paragraph (B)(2)(a) speaks of appeals to the Medicaid-funded component of the PASSPORT Program while paragraph (B)(2)(b) of the rule speaks to the state-funded component of the PASSPORT program.
5. Replace "whether" in paragraph (C)(1) [ow (C)(1)(a)] of the rule with "if."
6. Replace "in rule 173-40-02" in paragraphs (C)(1) [now (C)(1)(a)] and (C)(4) [now (C)(1)(d)] of the rule with "under paragraph (A)(3) of rule 173-40-02."
7. Replace "all eligibility criteria" in paragraph (C)(3) [now (C)(1)(c)] of the rule with "all the eligibility criteria under paragraph (A)(3) of rule 173-40-02 of the Administrative Code."
8. Replace "fails" in paragraph (C)(4) [now (C)(1)(d)] of the rule with "no longer continues."

9. Replace "consumer's failure" in (C)(5)(a)(i) [now (C)(2)(a)(i)] with "consumer no longer continues."

10. Replace the eligibility criteria set forth by rule 173-40-02" in rule (C)(5)(a)(i) [now (C)(2)(a)(i)] of the rule with "all the eligibility criteria under paragraph (A)(3) of rule 173-40-02."

11. Insert "if any" after "authorized representative" in any paragraph of the rule that used the term without "if any."

12. Replace "an enrollee" in paragraph (C)(6) [now (C)(3)] of the rule with "a consumer."

13. Replace "less" with "more" in paragraph (C)(6)(b) [now (C)(3)(b)] of the rule.

14. Place "or the site director's designee" and "and/or the consumer's authorized representative" in parentheses in paragraph (C)(6)(e) [now (C)(3)(e)] of the rule.

15. Replace "Whenever" in paragraph (C)(6)(i) [now (C)(3)(i)] of the rule with "If."

16. Insert "authorized" before "representative" in the second occurrences of "representative" in paragraph (C)(6)(i)(i) [now (C)(3)(i)(i)] of the rule.

17. Replace "if the consumer has a representative" in paragraph (C)(6)(i)(i) [now (C)(3)(i)(i)] of the rule with "if any."

18. Insert "or her" after both occurrences of "his" in paragraph (C)(6)(i)(ii)(b) [now (C)(3)(i)(ii)(b)] of the rule.

19. Add the sub-headings of "Reassessments," "Disenrollment," "Appeals," and "Further appeals" to the paragraphs under paragraph (C) of the rule, which will alter the above-mentioned paragraph numbers as indicated in brackets above.

20. Revise this RSFA.

On July 28, 2011, ODA revise-filed the rule to:

1. Replace "Eligibility in" in paragraph (A)(2)(b) of the rule with "Eligibility for."
2. Upload a revised public-hearing notice.
3. Revise this RSFA.

On August 1, 2011, ODA revise-filed the rule to:

1. Replace "traditional" in paragraphs (A)(4) and (B)(4) of the rule with "other." This matches the language ODA uses in rule 173-40-02 of the Administrative Code.

2. Insert new paragraphs (C)(5), (C)(5)(a), and (C)(5)(b) of the rule, which together say, "Re-enrollment: After ODA's designee disenrolls the consumer from the state-funded component of the PASSPORT program, ODA's designee may not subsequently re-enroll the consumer back into the state-funded component of the PASSPORT program on the basis of presumptive eligibility. After ODA's designee disenrolls a consumer from the state-funded component of the PASSPORT program, ODA's designee may not subsequently enroll the consumer into the state-funded component of the assisted-living program."

3. Insert new paragraph (C)() of the rule, which says, "Transfer: After ODA's designee disenrolls the consumer from the state-funded component of the PASSPORT program, ODA's designee shall assist the consumer in order to responsibly transfer the consumer to other community-based long-term care services or to a nursing facility." (See the subsequent refiling on August 17, 2011.)

4. Upload a revised public-hearing notice.

5. Revise this RSFA.

On August 11, 2011, ODA revise-filed the rule to:

1. Replace "ODA's designee shall assist any consumer that it disenrolls in order to responsibly transfer the consumer to" as the phrase appears in paragraphs (A)(4), (B)(4), and (C)(6) of the rule with "As appropriate, ODA's designee shall help any consumer that it disenrolls transfer to." Also, delete "After ODA's designee disenrolls the consumer from the state-funded component of the PASSPORT program," from the beginning of paragraph (C)(6) of the rule. (See the subsequent revise-filing on August 17, 2011.)

2. Replace all usages of "the consumer" in and under paragraph (C) of the rule. Although there is only ODA has only one individual left in the program on a grandparented basis, ODA needs to write the law for all Ohioans.

3. Upload a revised public-hearing notice.

4. Revise this RSFA.

On August 17, 2011, ODA revise-filed the rule to:

1. Replace paragraph (A)(2) of the rule, which said, "Appeals: There are no appeal rights for a consumer who is disenrolled from the state-funded component of the PASSPORT program if the consumer was enrolled in the state-funded component of the PASSPORT program on the basis of presumptive eligibility," with "Appeals: ODA shall provide notice and an opportunity for a hearing in accordance with Chapter 119. of the Revised Code to any individual whose application for state-funded component of the assisted living program whose applications is denied, or whose participation in the state-funded component of the assisted living

program is terminated before three months of enrollment has elapsed."

2. Replace "financial eligibility criteria and (and any other criteria)" in paragraph (A)(3)(b) of the rule, with "financial eligibility criteria and non-financial eligibility criteria."

3. Replace paragraphs (B) of the rule (including its sub-paragraphs), which said, (B) "Appeals: (a) If a consumer loses their eligibility for the medicaid-funded component of the PASSPORT program, the consumer may appeal that action in accordance with Chapter 5101:3-31 of the Administrative Code. (b) Because appeal rights are provided for any consumer who is denied enrollment in, or disenrolled from, the medicaid-funded component of the PASSPORT program, there are no appeal rights for a consumer who is disenrolled from the state-funded component of the PASSPORT program if the consumer was enrolled in the state-funded component of the PASSPORT program on the basis of loss of medicaid," with "Appeals: ODA shall provide notice and an opportunity for a hearing in accordance with Chapter 119. of the Revised Code to any individual whose application for state-funded component of the assisted living program whose applications is denied, or whose participation in the state-funded component of the assisted living program is terminated before thirty days of enrollment has elapsed."

4. Remove the first sentence of paragraph (B)(2)(b) of the rule, which said, "Eligibility for the state-funded component of the PASSPORT program on the basis of loss of medicaid is available to temporarily protect the consumer, ODA's designee, and certified providers from medicaid financial eligibility outcomes that may either produce dangerous absences of consumer care or the denial of provider reimbursement when services have been provided in good faith."

5. Remove the requirements for ODA's designee to notify a person who eligible for the program on the basis of presumptive eligibility or on loss of Medicaid financial eligibility of the day that their enrollment in the state-funded component of the PASSPORT program ends.

6. Remove the requirements for ODA's designee to help transfer a person that it disenrolls to other services.

7. Remove sub-headings labeled "Re-enrollment" with "Post-disenrollment prohibitions."

8. Replace citations to rule 173-40-02 of the Administrative Code to correspond with the reformatting fo the rule as revise-filed on August 17, 2011.

9. Revise this RSFA.

On August 18, 2011, ODA refiled the rule to:

1. Insert "who is" after "consumer" in paragraphs (A), (B), and (C) of the rule.

2. Insert "financial eligibility" after "Loss of medicaid: in paragraph (B) of the rule.
3. Replace the occurrences of "assisted living: in paragraphs (A)(2) and (B)(2) of the rule with "PASSPORT."
4. Replace two occurrences of "(A)(3)" in paragraphs (C)(1)(c) and (C)(1)(d) of the rule with "(C)."
5. Replace all occurrences of "may not" throughout the rule with "shall not." Both have the same meaning, but "may not" may mislead a person to believe that compliance with a prohibition is optional.
6. Delete "specified" in paragraph (C)(1)(a) of the rule.
7. Remove the hyphen between "assisted" and "living" in paragraphs (A)(3)(c), (B)(3)(b), and (C)(5)(b) of the rule.
8. Replace the occurrences of "criteria in" throughout the rule with "criteria under."
9. Replace "he" in paragraph (C)(3)(f) of the rule with "the consumer."
10. Revise this RSFA.

12. 119.032 Rule Review Date: **7/13/2011**

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

FISCAL ANALYSIS

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

\$0.00

Although ODA operates the state-funded component of the PASSPORT Program, H.B. No. 153 moved the PASSPORT Program's funding to budget line item

GRF-600-525, which is under JFS, not ODA. Therefore, ODA estimates that the proposed amendment of this rule will have no impact upon the biennial budget that the Ohio General Assembly established for ODA in H.B. No. 153.

Additionally, the Ohio General Assembly factored H.B. No. 153's amendments to section 173.40 of the Revised Code into the impact upon line item GRF-600-525 and the state-funded component of the PASSPORT Program.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

GRF-600-525 Health Care/Medicaid (State and Federal).

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

ODA estimates that there is no cost of compliance to any directly-affected person associated with the proposed amendment of this rule.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **No**

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**